would agree to the allotment of shares and the payment of dividends to the respondents. The reason he objected to the allotment of the disputed 369 shares was because he disputed the actual amount that was owed by the company to Joo Siang claiming that there was overcharging of fertilizers on the part of Joo Siang & Co. We pause here to interpolate that the learned judge also made the same observation in his judgment in this respect. See p 5 of the judgment. On account of this he had to take the stock book on 28 February 1977 in order to verify Joo Siang & Co's claim. Accordingly he had instituted a Civil Suit No 424/82 against Joo Siang & Co in respect of the overcharging. Once the outcome of the case is known then the capitalization could proceed but must be based on the amount owing to Joo Siang as decided by the court on the same basis as in the case of Poh Lan Tobacco. (See Yeoh Kim Pong's evidence at pp 25-29 of the record of appeal.)

There is no reason for us to suspect that Yeoh Kim Pong in this respect will not honour his own solemn words on oath given in the High Court to deprive the respondents of what is due to them once the High Court has made a decision on the Civil Suit No 424/82. By the same token the respondents' right to the allotment of shares of capitalization is assured in these solemn words. Since the matter is now pending hearing in the High Court the respondents must in the meantime exercise the virtue of patience. Under the circumstances we do not think this is a proper case for us to exercise our discretion under s 63 to validate the allotment of the 369 shares since we are in no position to verify the actual amount that is owing to the respondents and more importantly this matter is sub judice. It would, in our opinion, be proper to let justice take its own course and the litigating parties abide by the decision of that civil suit when it is finally disposed of by the court. In the result we would allow this appeal with costs here and below and grant the order in terms of the prayer in Civil Suit No 379 of 1978.

Appeal allowed.

Solicitors: *Zainur & Maydien; Azman Davidson & Co.*

Reported by *Prof Ahmad Ibrahim*

RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-235-89
LEE HUN HOE CJ (BORNEO), HARUN HASHIM AND GUNN CHIT TUAN SCJJ
1 NOVEMBER 1990

Labour Law — Trade union — Trade union seeking recognition — Application to permit distribution of membership forms and collection of dues from employees of company — Refusal by company — Application for injunction that company or its agents or servants shall not prevent or interfere with the union's membership drive — Injunction granted — Application to set aside injunction — Industrial Relations Act 1967, ss 4, 5, 7 & 8

Civil Procedure — Interim injunction — No action before court — Effect of granting injunction is to give full relief to applicant — Whether exceptional circumstances exist

In this case the first respondent is a trade union and the other respondents are the employees of the appellants who are a semiconductor manufacturing company. Some of the employees of the company had formed an in-house union and this had been registered. The trade union wanted to obtain recognition by the company and it therefore needed to have as its members more than 50% of the employees of the company who are eligible to join the union. The trade union therefore set about to enlist the employees of the company as members of the union. They applied for permission from the company to distribute membership forms and collect dues from the employees but this was refused. A complaint was made to the Director-General of Industrial Relations. The trade union later applied for an interim injunction to restrain the defendants from preventing or interfering with the plaintiffs or their agents or servants in distributing union membership forms and collecting union dues from employees of the defendant in all three shifts during their non-working hours on the defendant's premises until after the hearing of the action or the disposal by the Industrial Court of the complaint by the first plaintiff. The application was granted.

The appellants applied to have the injunction dissolved and when the application was dismissed they appealed to the Supreme Court.

Held, allowing the appeal:

(1) It is settled law that a temporary injunction may be granted to preserve the status quo pending the trial of an action. In this case there was no cause of action before the court nor was there any status quo to be preserved.

(2) As the respondents had already made a complaint to the Director-General of Industrial Relations, there is adequate remedy under the law for the respondents to pursue. The matter was still pending and the High Court should not have interfered.

(3) The effect of the interim injunction granted in this case was to give the respondents what they want all along which they never had before without going to trial. An interim injunction which virtually gives the full relief to be secured at the trial is never granted save in exceptional and extremely rare cases. In the present case there were no exceptional circumstances to warrant the grant of the injunction at that stage.

(4) The grant of the injunction by implication may cause embarrassment to the minister, the Industrial Court and eventually to the High Court in the determination of the application of the Industrial Relations Act 1967 and if it applies as to the extent and circumstances in the present dispute between the parties because the grant of the injunction predetermined that issue. As the injunction has that effect it should not have been granted.

[Bahasa Malaysia summary

Di dalam kes ini responden pertama ialah suatu kesatuan sekerja dan responden-responden yang lain adalah pekerja perayu, sebuah syarikat membuat semiconductor. Beberapa pekerja, syarikat itu telah menubuhkan kesatuan sekerja untuk syarikat itu dan ini telah didaftarkan. Kesatuan sekerja ingin mendapat pengiktirafan daripada syarikat itu dan bagi maksud itu ia perlu mendapatkan sebagai ahlinya lebih dari 50% pekerja syarikat itu yang berhak menjadi ahli kesatuan itu. Kesatuan itu telah berusaha mendapatkan pekerja syarikat itu sebagai ahlinya. Ia telah memohon kebenaran mengedarkan borang ahli dan memungut yuran dari pekerja-pekerja syarikat itu akan tetapi ini tidak dibenarkan. Ia telah mengadu kepada Ketua Pengarah Perhubungan Perusahaan. Kemudianya ia telah memohon mendapat injunksi sementara untuk menghalang defendan mencegah atau dengan apa-apa cara lain menggangu plaintif atau wakil atau pengkhidmatnya menyiarkan borang ahli kesatuan atau memungut yuran kesatuan dari pekerja-pekeraja defendan didalam tiga-tiga shift pada masa mereka tidak bekerja di premis defendan hingga tindakan ini dibicarakan atau keputusan diberi mengenai tuntutan perayu pertama di Mahkamah Perusahaan. Permohonan itu di benarkan.

Perayu telah memohon supaya injunksi itu dibubarkan dan apabila permohonannya telah ditolak ia merayu kepada Mahkamah Agung.

Diputuskan, membenarkan rayuan itu:

(1) Adalah menjadi undang-undang yang ditetapkan bahawa injunksi sementara boleh diberi untuk memelihara status quo sebelum perbicaraan sesuatu tindakan. Di dalam kes ini tidak ada kausa tindakan di hadapan mahkamah atau status quo untuk dipelihara.

(2) Oleh kerana responden-responden telah membuat aduan kepada Ketua Pengarah Perhubungan Perusahaan, telah pun terdapat remedi di bawah undang-undang yang boleh dituntut oleh mereka. Perkara itu belum lagi diputuskan dan Mahkamah Tinggi seharusnya tidak menggangu perkara itu.

(3) Kesan injunksi sementara yang diberi di dalam kes ini ialah memberi responden-responden semua yang ia tuntut selama ini yang mereka tidak pernah dapat tanpa membuat tuntutan di mahkamah. Injunksi sementara yang pada hakikatnya memberi relif sepenuhnya yang dituntut di perbicaraan itu tidak biasanya diberi melainkan di dalam kes-kes yang istimewa dan jarang-jarang berlaku. Di dalam kes ini tidak ada perkara-perkara yang istimewa yang membolehkan injunksi seperti itu diberi.

(4) Pemberian injunksi di dalam kes ini boleh secara implikasi membawa kesulitan kepada menteri, Mahkamah Perusahaan dan akhirnya kepada Mahkamah Tinggi dalam memutuskan sama ada Akta Perhubungan Perusahaan 1967 terpakai dan jika terpakai setakat mana kerana pemberian injunksi itu akan memutuskan terlebih dahulu perkara itu. Oleh kerana injunksi itu mempunyai kesan sedemikian, ia tidak seharusnya diberi.]

Cases referred to

1 *Manggai* v *Government of Sarawak* [1970] 2 MLJ 41 (folld)
2 *Wilkinson* v *Barking Corp* [1948] 1 KB 721 (folld)
3 *Metal Industry Employees Union* v *Registrar of Trade Unions* [1976] 1 MLJ 220 (refd)
4 *Electrical Industry Workers Union* v *Registrar of Trade Unions & Anor* [1976] 1 MLJ 177 (folld)
5 *Sivaperuman* v *Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150 (folld)
6 *Harold Stephen & Co Ltd & Ors* v *Post Office* [1978] 1 All ER 939 (folld)

Legislation referred to

Industrial Relations Act 1967 ss 4, 5, 7, 8
Specific Relief Act 1950 s 50

VT Nathan (*Peh Lee Kheng* with him) for the appellants.
Haji Sulaiman bin Abdullah (*Sivarasa Rasiah* with him) for the respondents.

Cur Adv Vult

Harun Hashim SCJ (delivering the judgment of the court): The first plaintiff is a trade union ('the union') and the second to sixteenth plaintiffs ('the plaintiffs') are employees of a semiconductor manufacturing company ('the defendants') which has been in operation since 1974. According to the plaintiffs, the government, as a matter of policy, had for years not allowed the formation of trade unions in the electronics industry until September 1988 when the Minister for Labour announced that it would allow the formation of in-house trade unions in the industry.

On 21 January 1989 about 60 employees of the defendant company held a meeting to form an in-house union and elected a pro-tem committee. They applied for registration of the union on 23 January 1989 which was approved by the Registrar of Trade Unions on 31 January 1989. On 1 February 1989, the union informed the company that it had been registered.

The next step is to obtain recognition of the union by the company. In order to be accorded recognition, the union must have as its members more than 50% of the employees of the company who are eligible to join the union. They set about to enlist the employees of the company as members of the union.

The plaintiffs allege that the management is strongly opposed to the establishment of the union and has resorted to intimidation, harassment and victimization of its employees to prevent them from joining the union and forced the resignation of those who have joined. In particular, the company has prohibited the union officials from distributing membership application forms and collection of union dues on the company's premises.

On 1 March 1989, the company issued HR Circular No 4/89 which is a reminder of the company's rules of conduct which prohibits:

(a) employees from re-entering the company's premises after work;
(b) distribution of any literature during working hours or literature which are not job related;
(c) inter plant movement of employees during working hours except on company business; and
(d) collection of moneys without the approval of the management.

The union then complained to the minister, the Director-General of Labour and the Registrar of Trade Unions that the defendants were harassing and intimidating the employees. As a result, a meeting was held at the Department of Industrial Relations on 7 March 1989 which was attended by representatives of the company and the union. The parties agreed in a memorandum of understanding to recognize and respect each other's legal rights and not to interfere with such rights to ensure industrial peace and harmony at the work place.

On 2 April 1989, the union held its first annual general meeting outside the company's premises. It is alleged that this meeting was interfered with by officers of the company and the police had to be called in. On 10 April 1989 the union lodged a formal complaint with the Director-General of Industrial Relations with regard to this interference.

On 15 April 1989, the union informed the defendants the names of employees of the union who were elected office-bearers of the union at the annual general meeting on 2 April 1989 and that the union will be undertaking a membership drive which would involve the distribution of membership application forms and collection of union dues. It asked for the defendants' co-operation and gave an undertaking that the union activities will not interfere with the company's operations. It, however, involves union representatives re-entering the company's premises after working hours. The defendants by letter of 25 April 1989 in reply said that the union representatives will not be permitted to re-enter the company's premises after working hours. It also said that all union activities should be conducted after working hours and outside the company's premises on the ground that it might create tension and misunderstanding between groups of employees. On the same day the company issued IR Circular No 8/89 drawing attention to s 7 of the Industrial Relations Act 1967, viz prohibition on workmen and their trade unions in respect of persuading workers from joining or refraining from joining a trade union during working hours and the company's regulations on pain of disciplinary action. The circular is in English and Bahasa Malaysia but the plaintiffs took exception to the fact that the proviso to s 7(a) that the prohibition does not apply to workers employed in the same undertaking when the act does not interfere with normal duties was not translated into Bahasa Malaysia.

On 13 May 1989, the union lodged a formal complaint with the Director-General of Industrial Relations under s 8 of the Industrial Relations Act 1967, that the defendants had contravened s 7.

On 23 May 1989, the plaintiffs filed an originating summons seeking:

(a) a declaration that HR Circular No 4/89 and the letter of 25 April 1989 are in breach of the plaintiffs' rights under art 10 of the Constitution;
(b) a declaration that HR Circular No 4/89 and the letter of 25 April 1989 are in breach of the plaintiffs' rights under ss 4, 7, and 9 of the Industrial Relations Act 1967;
(c) a declaration that HR Circular No 4/89 and letter of 25 April 1989 are in breach of the memorandum of understanding of 7 March 1989;
(d) an injunction that the defendants be restrained from interfering with the plaintiffs' rights under s 9 of the Industrial Relations Act 1967;
(e) an injunction that the defendants be restrained from interfering with restraining from or coercing the second to sixteenth plaintiffs in the exercise of their rights to participate in the activities of the union and in particular in the distribution of union circulars, membership application forms and collection of union dues during non-working hours on the company's premises during all these working shifts.

On 23 May 1989, the union and plaintiffs applied ex parte for an interim injunction in respect of prayer (e) which was granted by the learned judge on 29 May 1989 in the following terms:

> It is ordered that the defendants by their agents or servants or howsoever or otherwise be restrained from preventing or in any way interfering with the plaintiffs or their agents or servants in distributing union membership forms and collecting union dues from employees of the defendant in all three shifts during their non-working hours on the defendant's premises until after the hearing of this action or the disposal by the Industrial Court the complaint by the first plaintiff or until further order and that the costs of this application be costs in the cause.

with the usual undertaking as to payment of damages.

On 6 June 1989, the defendants applied to have the injunction dissolved which was dismissed by the learned judge on 12 June 1989. Hence this appeal.

An injunction is a preventive relief granted at the discretion of the court: s 50 Specific Relief Act 1950. And a temporary injunction may be granted pending the hearing of any matter before the court: s 51(1). It is settled law that an interim injunction may be granted to preserve the status quo pending the trial of an action. It was argued in the instant case that as there is no provision in the Industrial Relations Act 1967 for a stay order to preserve the status quo, the plaintiffs had no other alternative but to seek the court's aid by way of an interim

injunction. This argument however overlooks two important factors.

Firstly, whether there was in fact a cause of action before the court. On the facts, it is clear that the dispute between the parties concerns trade union activities at the company's premises. Such activities are regulated by the Industrial Relations Act 1967 which confers rights on employers and employees and the remedies in the event of any breach of such rights. Gill FJ speaking for the Federal Court in *Manggai* v *Government of Sarawak & Anor*[1] said at p 44:

> It is well settled law that the court will not make a declaratory judgment where an adequate alternative remedy is available.

and quoted with approval the statement of Lord Asquith in *Wilkinson* v *Barking Corp*[2] at p 724:

> It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

See also *Metal Industry Employees Union* v *Registrar of Trade Unions*[3] and *Electrical Industry Workers Union* v *Registrar of Trade Unions & Anor.*[4]

In the instant case, s 4 of the Industrial Relations Act 1967 provides that an employer shall not interfere with, restrain or coerce a workman in the exercise of his rights to join a trade union and to participate in its lawful activities; s 5 prohibits employers from discriminating employees who are members of a trade union or threaten employees with dismissal should they want to join the union; s 7 prohibits workmen from persuading others to join a trade union during working hours without the consent of the employer; and s 8 provides the remedy against contraventions of ss 4, 5 and 7.

In the present case the plaintiffs lodged a formal complaint under s 8 with the Director-General of Industrial Relations on 13 May 1989. Upon receipt of the complaint, the Director-General under sub-s (2) has to make enquiries and to take steps to solve the complaint; where the complaint is not resolved, the Director-General shall notify the minister. Under sub-s (2A) the minister may refer the complaint to the Industrial Court for hearing; and under sub-s (3) the Industrial Court shall conduct a hearing and make an appropriate award. There is therefore adequate remedy under the law for the plaintiffs to pursue. Thus far none of the steps have been taken after the lodgment of the complaint. The High Court therefore should not have interfered at this stage.

Secondly, the argument overlooks whether in fact there was a status quo to be preserved. The plaintiffs rely on the proviso to s 7(a) of the Industrial Relations Act 1967 which reads:

> Provided that the provisions of this paragraph shall not be deemed to apply to any act by a workman employed in the same undertaking where the act does not interfere with his normal duties.

and contend that they therefore had the right to distribute membership application forms and collect union dues on the company's premises during non-working hours without the company's consent. On the facts, even if the plaintiffs had such a right, it was not exercised before and the dipute between the parties arose from the plaintiffs' attempt to exercise such right. This is precisely the dispute the plaintiffs complained of to the Director-General of Industrial Relations under s 8. We are therefore of the view that there was no status quo to be preserved by an interim injunction.

The effect of the interim injunction granted in the present case is to give to the plaintiffs what they really want all along which they never had before without going to trial. An interim injunction which virtually gives the full relief sought to be secured at the trial is never granted save in exceptional and extremely rare cases: *Sivaperuman* v *Heah Seok Yeong Realty Sdn Bhd*,[5] the Federal Court at p 151 quoting with approval Geoffrey Lane LJ in *Harold Stephen & Co Ltd & Ors* v *Post Office*[6] at p 944:

> It can only be in very rare circumstances and in the most extreme circumstances that this court should interfere by way of mandatory injunction in the delicate mechanism of industrial disputes and industrial negotiations.

In the present case there are no exceptional circumstances to warrant the grant of an injunction at the present stage. The only real circumstance here is that but for the injunction there will be some inconvenience to the plaintiffs in its membership drive.

Finally, the grant of the injunction by implication may cause embarrassment to the minister, the Industrial Court and eventually to the High Court in the determination of the issue as to the application of the proviso to s 7(a) of the Industrial Relations Act 1967 and if it applies as to its extent and circumstances in the present dispute between the parties because the grant of the injunction has pre-determined that issue.

As the injunction has that effect it should not have been granted: *Electrical Industry Employees Union* v *Registrar of Trade Unions*[4] at p 181.

For the reasons stated, we allowed the appeal with costs and dissolved the injunction.

Appeal allowed.

Solicitors: *Shearn Delamore & Co and Drew & Napier; Zain & Co.*

Reported by *Prof Ahmad Ibrahim*